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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,346	12/31/2003	Gil I. Nadel	5760-14700	9474
35690	7590	09/14/2006	EXAMINER	
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. 700 LAVACA, SUITE 800 AUSTIN, TX 78701			ROSE, HELENE ROBERTA	
			ART UNIT	PAPER NUMBER
			2163	

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/750,346	Applicant(s) NADEL ET AL.	
	Examiner Helene R. Rose	Art Unit 2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

1. Claims 1-25 are pending; Claims 1-4, 9-20, and 24-25 have been amended; No new claims have been added, nor cancelled.
2. Applicant's arguments, filed on 7/5/2006, with respect to claims 1-25 have been considered, but are not persuasive.

Claim Rejections – 35 U.S.C – 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Risch (US Patent No. 5,471,629, Date of Patent: November 28, 1995).

Claims 1,9, 17, and 25:

Claims 1,9, and 17, and 25 discloses a performance management system/method/**computer-readable storage** medium implementing the same functionality, Risch teaches a performance management system/method/and carrier medium (column 5, lines 16-20, Risch), comprising:

a database server (Figure 10, all features, wherein a database server is defined as a database program on a local area network, utilized with client programs by multiple users, Risch) comprising a plurality of database objects (column 17, lines 66-67, wherein query and service reports is defined, column 19, lines 4-16, wherein various system tables, monitored query is interpreted to be database object, wherein database objects is defined to be tables, queries, forms,

Art Unit: 2163

reports, and so forth, and column 7, lines 34-60, wherein a plurality of client programs consist of the following steps defined, Risch), **wherein each of the plurality of database objects comprises an aggregation of store data** (column 10, lines 14-20 and 52-57, wherein updating a monitor properties table, wherein this table is a housekeeping table which tells the system where to find the client address and attribute value tables and column 17, lines 35-45, wherein queries, and service report is defined and producer report is shown in table 3, within column 17 as well, and wherein database objects are defined to be tables, queries, forms, and reports, Risch¹); and a performance warehouse (column 18, lines 51-53, wherein tuning optimizing performance of the system, Risch), which stores performance data for the plurality of database objects (column 7, lines 34-36, update transaction be stored in the database, Risch);

wherein the performance management system is **configured** to:

detect a performance problem in the database server (Figure 3, diagram 302, Risch);

identify a problematic database object of the plurality of database objects using the performance data for the plurality of database objects (column 18, lines 6-12, wherein failure rate reporter is run at a fixed time intervals, and also calculates current failure rates from reports received for the various parts, and column 16, lines 46-64, wherein recognizing the characteristics each product, part, and relationships is interpreted to be identifying, and wherein failures of parts are reported, Risch), wherein the problematic database object is related to the

¹ Risch discloses a database system and monitor server, wherein the monitor server functionality within Risch invention is equivalent to a database server claimed within the applicant's invention. A database server manages data queries and a database system is designed to manage a database, a large set of structured data, and run operations on the data requested by numerous users (Refer to column 15, lines 35-37 and lines 60-61 and Figure 9 and Figure 10, all features, wherein the figures are defined within column 15, Risch).

Art Unit: 2163

performance problem (Figures 811 and 812, wherein two failure rate reporters feed data into the database, Risch); and

tune the problematic database object to improve performance of **access to the stored data** in the database server (column 11, lines 13-14, Risch).

Claims 2, 10, and 18:

Claims 2, 10, and 18, Risch teaches wherein the tuning the problematic database object to improve performance of **access to the stored data** in the database server computer system comprises moving (column 14, lines 58-65, wherein the system deletes the function change table for that client and removes the client from the client address and attribute value table, Risch) the problematic database object from nonvolatile storage to volatile storage (column 15, lines 9-22, wherein nonvolatile storage is considered to be hardware, wherein hardware is defined to be the physical equipment of a computer system, including the central processing unit, data-storage devices, terminals and mass storage is data storage on a system that is non-volatile in nature, and wherein RAM is considered to be a type of computer storage, i.e. magnetic disk drive, Risch) for improved speed of access (column 7, lines 32-35, wherein efficiency is defined to be avoiding wasted time and effort, Risch).

Claims 3, 11, and 19:

Claims 3, 11, and 19, Risch teaches wherein the tuning the problematic database object to improve performance of **access to the stored data** in the database server computer system comprises creating a new access path to the problematic database object (Figure 4, diagram 403, Risch).

Claims 4, 12, and 20:

Claims 4, 12, and 20, Risch teaches wherein tuning the problematic database object to improve performance of **access to the stored data in** the database server computer system comprises moving the problematic database object from heavily loaded storage (column 15, line 29, wherein data are actually resident in mass storage, wherein mass storage is any device used to store large amounts of data Risch) components to less loaded storage components (Figure 6, diagram 323, wherein minimum amount is defined, Risch).

Claims 5, 13, and 21:

Claims 5, 13, and 21, Risch teaches wherein the performance data comprises an I/O wait (Figure 7, diagrams 221, Risch, column 10, lines 20-21, wherein entered in the table, and column 13, lines 3-4, wherein a notification as indicated by a yes output, Risch).

Claims 6, 14, and 22:

Claims 6, 14, and 22, Risch teaches wherein the performance data comprises an application lock wait (Figure 2, diagram 215 and Figure 3, diagram 310, defined further in column 9, lines 21-24, wherein waiting notifications and column 11, lines 55-63, wherein execution of commit must wait until any other client and every commit must wait until the system, Risch).

Claims 7, 15, and 23:

Claims 7, 15, and 23, Risch teaches wherein the performance data comprises a resource contention (column 20, lines 23-34, wherein client programs participate actively in the monitoring by issuing monitor requests that specify one or more of the four tuning parameters: change value, tracking delay time, synchronous initiation and nervousness, wherein tuning

Art Unit: 2163

makes it possible for the client to interact with the database, and a large number of clients located in different physical places and running on different computers, can access a very large database in a highly efficient manner, Risch).

Claims 8, 16, and 24:

Claims 8, 16, and 24, Risch teaches correlating the collected performance data (column 15, lines 35-43, wherein the memory of the main computer contains the database system, i.e. data and software, the monitor server can interrupt the client program and invoke a predestinated procedure through a communication channel, and receives notifications from the database, Risch) to specific database objects of the plurality of database objects (column 17, lines 66-67, wherein query and service reports is defined, column 19, lines 4-16, wherein various system tables, monitored query is interpreted to be database object, wherein database objects is defined to be tables, queries, forms, reports, and so forth, and column 7, lines 34-60, wherein a plurality of client programs consist of the following steps defined, Risch).

Prior Art of Record

(The prior art made of record and not relied upon is considered pertinent to applicant's disclosure)

1. Risch (US Patent No. 5,471,629) discloses a method of monitoring objects in a database system.
2. Guay et al (US Patent No. 6,553,369) disclose an intelligent approach for performing administrative functions generally involves performing a set of administrative function steps within a maintenance window that is defined by one or more specified time periods, and wherein aspects and features of the invention include: identifying and prioritizing administrative function

steps; estimated function times and maintenance window; failure prediction; environment recommendations; history information and learning techniques; saving state and context information; and user feedback.

3. Lindskog et al (US Patent No. 6,370,572) disclose a distributed communications network management and control system, which includes a real time control system composed of a plurality of control agents, wherein the control agents receive real time performance information associated with the distributed communications network from a plurality of performance agents, analyze the real time performance information, and in due time, output control commands that control the performance of the distributed communications network based on the real time performance data received.

Response to Arguments

5. Applicant argues prior fail to teach, *“tuning the problematic database object to improve performance of access to the stored data in the database sever computer system”*.

Examiner respectfully disagrees. In response to applicant's arguments, the recitation *“tuning the problematic database object to improve performance of access to the stored data in the database sever computer system”* has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

***** See footnote, wherein Referring to column 11, lines 13-14, wherein a database system and monitor server is defined within Risch invention, and wherein the “monitor server” functionality within Risch invention is equivalent to a “database server” claimed within the applicant’s invention. A database server manages data queries and a database system is designed to manage a database, a large set of structured data, and run operations on the data requested by numerous users (Refer to column 15, lines 35-37 and lines 60-61 and Figure 9 and Figure10, all features, wherein the figures are defined within column 15, and claims 1,9,17 and 25).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

7. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final


Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helene R. Rose whose telephone number is (571) 272-0749. The examiner can normally be reached on 8:00am- 4:30 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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September 12, 2006


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